

**IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR ES SALAAM  
MISC. COMMERCIAL CAUSE NO. 15 OF 2021  
AND  
IN THE MATTER OF ARBITRATION  
AND  
IN THE MATTER OF THE ARBITRATION ACT, 2020**

**BETWEEN**

**HTT INFRACO LIMITED.....PETITIONER**

**VERSUS**

**SMILE COMMUNICATIONS  
TANZANIA LIMITED..... RESPONDENT**

Last order: 09<sup>th</sup> June, 2021  
Judgment-Date: 11<sup>th</sup> June, 2021

**RULING**

**NANGELA, J.**

This ruling is in respect of a Petition filed in this Court on 14<sup>th</sup> April 2021, under section 68 (1) of the Arbitration Act, 2020, and Regulation 63 (1) (a), (b), (c), (d) and (e) of the Arbitration (Rules of Procedure) Regulations, 2021 (G.N. 146 of 2021). Subsequent to the filing, on 16<sup>th</sup> April 2021, this Court, in compliance with the requirements of

Regulation 63(2) of the Arbitration (Rules of Procedure) Regulations, 2021 (G.N. 146 of 2021), issued a notice of appearance to the parties. The court fixed the 9<sup>th</sup> of June 2021 as the date for the hearing of the parties.

In this Petition, the Petitioner seeks for the following orders/relief:

- (a) Leave of the Court be granted to the Petitioner to enforce the Final Award as a Judgment of the Court.
- (b) Judgment be entered as per the Final Award.
- (c) Costs of this Petition; and
- (d) Any other reliefs (sic) this Court may deem fit to grant.

Briefly stated, the Petitioner and the Respondent concluded an agreement (known **Master Tower License Agreement (MTLA)**) on or around 13 February 2013. In that Agreement, the Petitioner agreed to license space on land, towers and all equipment, machinery and facilities belonging to the Petitioner, whether by ownership, lease,

easement or mortgage (**Site**) to the Respondent and the Respondent agreed to pay the Petitioner license fee in full within 30 days of invoicing.

In the course of their relationship and performance of their obligations, the Respondent failed to honour tax invoices amounting to **US\$ 5, 591, 220**. Such invoices were submitted to the Respondent by the Petitioner in respect of 79 Sites licensed to the Respondent.

As a result of the Respondent's failure which constituted a breach of the **MTLA**, a dispute arose which was referred to an arbitrator in accordance with the terms and conditions of the **MTLA**. However, on 23<sup>rd</sup> of September 2020, and in the course of resolving the dispute, the parties filed before the Sole Arbitrator (Dr. Wilbert Kapinga) a Settlement Deed.

Pursuant to that Deed of Settlement, the Sole Arbitrator issued a **Final Award** in favour of the Petitioner on 26<sup>th</sup> October 2020. It is that Final Award which the Petitioner seeks to enforce in this Court.

On 9<sup>th</sup> June 2021, the matter was scheduled for necessary orders. On the material date, Mr Gasper Nyika and Ms Grace Kibaki, Learned Advocates, appeared for the Petitioner/Claimant while the Respondent enjoyed the services of Mr Honest Lugala, learned advocate.

In short, Mr Lugala did not oppose the Petition. However, he requested the Court to waive the prayer regarding payment of costs. He submitted, instead, that, each party should bear its own costs. Mr Nyika did not object to that submission by Mr Lugala regarding the waiving of costs of this Petition.

For the purposes of enforcement of an Arbitral award in this Court, section 68 (1) to (3) of the Arbitration Act, 2020, is the applicable provision.

According to that provision, an award can only be enforced after a leave of this Court is granted. Leave of the Court can only be withheld if the Respondent raises issues pointing to the fact that the Arbitral tribunal lacked jurisdiction to make the award. If there is no such an

eventuality, the law is clear that, once such a leave to enforce is granted, the Court will enter judgment in terms of the award. As stated earlier herein above, the Respondent does not wish to challenge this Petition.

As regards the propriety of the Petition (in terms of its form), conformity with Rule 63 (1) (a), (b), (c), (d) and (e) of the Arbitration (Rules of Procedure) Regulations, 2021 (G.N. 146 of 2021) is mandatory. I am satisfied that this Petition conformed to the requirements of that Regulation as well.

In view of the above, and given that the Respondent has not raised any concern regarding the Award, this Court hereby settles for the following orders, that:

1. in terms of section 68 (1) of the Arbitration Act, 2020, LEAVE of this Court is hereby granted to the Petitioner to enforced the Arbitral Award issued on 26<sup>th</sup> October 2020 by Dr Wilbert Kapinga, Sole Arbitrator, in the

same manner as a judgment or order of this Court.

2. That, pursuant to section 68 (2) of the Arbitration Act, 2020, the Arbitral Award issued on 26<sup>th</sup> October 2020 by Dr Wilbert Kapinga, Sole Arbitrator, is hereby adopted and entered as the Judgment and Decree of this Court.
3. Each Party to this Petition shall bear its own Costs.

**It is so ordered.**

DATED at **DAR-ES-SALAAM**, this **11<sup>th</sup> JUNE 2021**



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**HON. DEO JOHN NANGELA**  
**JUDGE**

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